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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,971	12/19/2001	Joseph P. Russo	EMC-01-109	4871

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EMC CORPORATION
OFFICE OF THE GENERAL COUNSEL
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EXAMINER

PARDO, THUY N

ART UNIT	PAPER NUMBER
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2165

DATE MAILED: 02/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,971

Applicant(s)

RUSSO ET AL.

Examiner

Thuy Pardo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-6, 14, 16-19 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 14, 16-19 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's Amendment filed on November 17, 2006 has been reviewed. Claims 2, 7-13, 15, 20-26, 28 and 29 have been canceled, and claims 1, 3, 14, 16 and 27 have been amended.
2. Claims 1, 3-6, 14, 16-19 and 27 are presented for examination.

Claim Objections

Claims 16-19 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. For instance, claim 16 depends on claim 13, which has been canceled. However, in the compact of prosecution, assume claim 16 depends on claim 14.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-6, 14, 16-19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsuka et al. (Hereinafter "Otsuka") US Patent No. 6,697,823, in view of Whiting et al. (Hereinafter "Whiting") US Patent No. 5,778,395.

As to claim 1, Otsuka teaches the invention substantially as claimed, comprising steps of:

using an application server [the application company 5 is an organization capable of providing applications as software to the computer system, col. 5, lines 47-53; 5a of fig. 1] for selectively presenting a user using a computer other than the backup or restore server with a graphical or command line generic user interface [the public terminal 1 includes a LAN interface 29, and is connected to the network 7, col. 15, lines 51-54; fig. 7] for performing a dialogue [through the public media for performing a dialogue with a user, see the fig. 1], wherein the interface is created using data structures created by the execution of selected ones of a plurality of function calls [see interface created data structures [fig. 14A-14C] and executed by selecting ones of a plurality function calls [arrow signs, "Determination" and "Cancel" buttons, see fig. 14B] and the function calls are part of the application program interface [see fig. 14A-14C]; and

using information acquired in the dialogue for configuring for or performing a backup or restore operation [fig. 6, 9, 14A-14C, 16-19, col. 4, lines 17-60] on the backup server [col. 2, lines 16-24, 44-47].

However, Otsuka does not explicitly teach that either the selective action of configuring or performing a backup or restore operation is carried out by the agent through communications with an application program interface although Otsuka teaches the application server may have the satellite communication section so that applications can be provided through the satellite

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communication, or through LAN interface connected to the network for performing a dialogue with a user [see the fig. 1, col. 15, lines 51-54; fig. 7]. Whiting teaches that either the selective action of configuring or performing a backup or restore operation is carried out by the agent through communications with an application program interface [col. 7, lines 19 to col. 8, lines 20; 108 of fig. 1].

Therefore, it would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to add the limitation of Whiting to the system of Otsuka as an essential means to provide higher security and decrease the amount of network bandwidth required for performing the backup

As to claim 3, Otsuka and Whiting teach the invention substantially as claimed. Whiting further teaches that the data structures are shared by more than one application program interface and the agent [fig. 1].

As to claim 4, Otsuka and Whiting teach the invention substantially as claimed. Otsuka further an application program interface that is directed toward configuring a client application for the backup or restore operation [fig. 8].

As to claim 5, Otsuka and Whiting teach the invention substantially as claimed. Otsuka further teaches an application program interface that is directed toward interfacing with a client application for carrying out the backup or restore operation [fig. 8-14].

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As to claim 6, Otsuka and Whiting teach the invention substantially as claimed. Otsuka further teaches an application program interface that is directed toward browsing a client application for objects to configure for or for carrying out the backup or restore operation [fig. 21-22].

As to claim 14, it is a corresponding apparatus claim of claim 1. Therefore, it is rejected under the same rationale.

As to claims 16-19 and 27, all limitations of these claims have been addressed in the analysis above, and these claims are rejected on that basis.

Response to Arguments

4. Applicant argues that Otsuka fails to teach or suggest that the interface is created using data structures created by the execution of selected ones of a plurality of function calls.

As to this point, Examiner respectfully disagrees. Examiner believes that Otsuka teaches this feature. Otsuka teaches that the interface creates data structures [see fig. 14A-14C, particularly in fig. 14B] that executed by one of a plurality of function calls [arrow signs, "Determination" and "Cancel" buttons, see fig. 14B].

5. Applicant's arguments filed on December 17, 2006 have been fully considered but they are not persuasive.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy Pardo, whose telephone number is 571-272-4082. The examiner can normally be reached Monday through Thursday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin, can be reached at 571-272-4146.

The fax phone number for the organization where this application or proceeding is assigned as follows: 571-273-8300 (Official Communication)

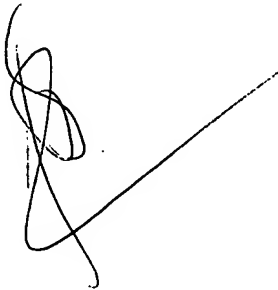
and/or:

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571-273-4082 (*Use this Fax#, only after approval by Examiner, for "INFORMAL" or "Draft" communication. Examiner may request that a formal/amendment be faxed directly to them on occasions*).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 14, 2006

A handwritten signature in black ink, consisting of a series of loops and a long diagonal stroke extending to the right.

**THUY N. PARDO
PRIMARY EXAMINER**